

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3372 OF 2019

Mahesh Gopinath Pawar

...Petitioner

vs.

The Commissioner of Police,
Pimpri-Chinchwar and Ors.

...Respondents

Mr. U.N. Tripathi a/w. Jayshree Tripathi, for the Petitioner.
Ms. M.H. Mhatre, APP for the Respondents-State.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

**ORDER RESERVED ON : 7th NOVEMBER, 2019
ORDER PRONOUNCED ON : 15th NOVEMBER, 2019**

ORDER (Per N.B. Suryawanshi, J.)

. The Petitioner challenges the detention order passed by the Commissioner of Police, Pimpri-Chinchwad dated 4th January, 2019 under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short “the said Act”).

2. Rule. Rule made returnable forthwith, heard with the consent of the parties.

3. Heard learned counsel for the Petitioner and learned APP for the State. With the assistance of both the learned counsel, we have perused the record.

4. To assail the impugned order of detention the learned counsel for the Petitioner pressed into service ground (e) which is to the effect that the report under section 3(3) of the said Act is to be forwarded forthwith to the State Government. Since there is delay in forwarding the report to the State Government, the impugned detention order is vitiated.

5. In the present case, the impugned detention order is dated 4th January, 2019 whereas report of the same was forwarded to the Government on 9th January, 2019 and the Government approved the order of detention on 14th January, 2019. The learned counsel therefore submits that the delay in forwarding the report has violated the fundamental rights guaranteed to the Petitioner under Article 22(5) of the Constitution of India, on this ground alone the impugned order is liable to be quashed and set aside. In support of his aforesaid submissions, the learned counsel placed reliance in the case of

Dharani Raja Padyachi vs. The State of Maharashtra and Ors., 2019 ALL MR (Cri) 3504 and in the case of Hetchin Haokip vs. State of Manipur and Ors., (2018) 9 Supreme Court Cases 562.

6. The learned APP supports the impugned order and urged that the report in terms of section 3(3) of the said Act was forwarded within reasonable time and hence, the detention order may not be interfered with.

7. On perusal of the original file, it appears that the report dated 4th January, 2019 was forwarded by the detaining authority only on 9th January, 2019 and admittedly there is delay of 3 days in forwarding the report. Even if we accept that 6th January, 2019 was a Sunday, the delay of 3 days has remained unexplained on the part of the detaining authority, which according to us is fatal to the case.

8. The learned counsel for the Petitioner was justified in placing reliance in the case of *Dharani Padyachi* (supra) wherein the Division Bench of this Court in similar facts held that delay of 2 days in forwarding report was fatal. It was held

that “*in terms of section 3(3) of the said Act, it is clear that upon making the order directing detention of the detenu, the specified officer is required to forthwith report that fact to the State Government together with the grounds on which the order has been made and such other particulars, as in the opinion of the detaining authority have a bearing on the matter*”. Thus the report is required to be sent forthwith to the State Government upon making the order directing the detention of the detenu. In that case delay was of 2 days in forwarding the report, which was held to be fatal though the same was sought to be explained by the detaining authority. In the present case, admittedly there is delay of 3 days in forwarding the report under section 3(3) of the said Act which according to us is not explained and the same vitiates the impugned detention order.

9. In this view of the matter, Writ Petition deserves to be allowed. Hence, the following order.

10. The impugned order of detention of the Petitioner passed by the Commissioner of Police, Pimpri-Chinchwad dated 4th

January, 2019 at Exhibit A is hereby quashed and set aside.

11. The Petitioner to be released forthwith, if he is not required in any other offence or proceeding.

12. Rule is made absolute in above terms. There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)